

U.S. ABILITYONE COMMISSION



Policy No. 51.542
Effective Date: 10/01/2022

TITLE: NONPROFIT AGENCY USE OF ABILITYONE PRODUCTS IN THE PERFORMANCE OF ABILITYONE SERVICE CONTRACTS

1. PURPOSE.

The Javits-Wagner-O’Day (JWOD) Act authorizes the U.S. AbilityOne Commission (Commission) to determine which products or services are suitable for placement on the Procurement List (PL). After an item is placed on the PL, Federal agencies are required to procure the listed item from the mandatory source authorized by the Commission. FAR clause 52.208-9 further specifies that certain supplies provided under a Federal contract for use by the Government must be obtained from an AbilityOne-participating nonprofit agency (NPA).

This Commission policy directs Central nonprofit Agencies (CNAs) to ensure that Federal contracting activities include FAR clause 52.208-9 (or an equivalent clause) and related contract schedules in all service contracts. In the absence of the FAR clause, this policy further directs “service-providing” NPAs to purchase and use supplies from “product-producing” NPAs to the maximum extent practicable.

2. APPLICABILITY.

This policy is applicable to CNAs and all NPAs performing a service or providing a product on the PL.

3. AUTHORITY.

- (a) 41 U.S.C. §§ 8501 – 8506, Javits-Wagner-O’Day (JWOD) Act
- (b) 41 CFR Chapter 51, Committee for Purchase From People Who Are Blind or Severely Disabled
- (c) Federal Acquisition Regulation (FAR), Part 8, Required Sources of Supplies and Services
- (d) FAR 52.208-9, Contractor Use of Mandatory Sources of Supply or Services

The Committee for Purchase From People Who Are Blind or Severely Disabled Operates as the U.S. AbilityOne Commission



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4. DEFINITIONS AND ACRONYMS.

Definitions, abbreviations, and acronyms frequently used throughout this policy system are provided in Commission Policy 51.102, Definitions. Terms unique to this policy are defined as follows:

DEFINITIONS	
Service Contract	A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task. It may cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Service contracts include, but are not limited to, overhaul, repair, servicing, rehabilitation, routine maintenance of real property, housekeeping, base services, advisory, professional services, call centers, etc.
Service-Providing NPA	For the purposes of this policy, a “Service-Providing NPA” is a nonprofit agency authorized to serve as a mandatory source for a service identified on the PL.
Product-Producing NPA	For the purposes of this policy, a “Product-Producing NPA” is a nonprofit agency authorized to serve as a mandatory source for products identified on the PL.
Contract Schedule	For the purposes of this policy, the “contract schedule” refers to the specific supplies that a service-providing NPA agrees to purchase and use from a product-producing NPA in the performance of a service contract.
Essentially the Same (ETS)	Defined in Commission Policy 51.541, Requirement to Purchase Products on the PL Instead of “Essentially the Same” (ETS) Items, dated April 27, 2015; incorporated by reference.



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- i. Determines which products and services are suitable to be furnished by NPAs and adds those items to the PL of mandatory source items; also determines the fair market prices to be paid for those items.
- ii. Authorizes NPAs to furnish products and perform services on the PL and oversees the CNAs' allocation of product and service requirements to authorized NPAs.
- iii. Authorizes commercial distributors of PL items in accordance with Commission policy and procedures.
- iv. Provides guidance to NPAs and monitors compliance with the JWOD Act and Commission regulatory requirements, including the requirements established in this policy.

(b) Central Nonprofit Agencies (CNAs):

- i. This policy directs CNAs to facilitate the inclusion of FAR clause 52.208-9 and the appropriate contract schedules in all service contracts performed by service-providing NPAs.
- ii. Ensure that service-providing NPAs purchase supplies from product-producing NPAs (whether the relevant FAR clause has been included in a service contract) to the maximum extent practicable.
- iii. Develop the process and procedures to carry out the purpose of this policy in the most effective and efficient manner practicable.
- iv. Monitor NPA performance on both the purchase and provision of PL products, furnish information and data from NPAs regarding product sales, and make recommendations to the Commission regarding NPA compliance with requirements of this policy.
- v. Manage a PL Exception-type process when the item cannot be purchased in the time required to meet NPA needs. Provide appropriate documentation to the NPA on the basis for and length of the approved exception. Provide copies of approved exceptions to the Commission.
- vi. Establish, at an appropriate level of internal leadership, an Ombudsman or CNA official formally tasked with the duty to receive and resolve complaints regarding NPA failures to comply with this policy, service-providing NPA concerns about item quality or product-



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producing NPA performance, or an NPA's written attestation required in sections 6(d) and 6(e) below.

- (c) Service-providing and product-producing NPAs:
 - i. Select PL products applicable to use in the performance of the service requirements they are assigned or allocated and provide the recommended list to the CNA for approval.
 - ii. Provide appropriate documentation attesting to the purchase of products for all PL requirements.
 - iii. Comply with the requirements to purchase PL products, reporting any out-of-stock items or non-competitive pricing to their designated CNA.
 - iv. Pursue exceptions from the CNA where necessary to ensure good performance.
 - v. Product-producing NPAs must assist service-providing NPAs with creating a contract schedule IAW FAR clause 52.208-9 and provide the necessary supplies in a timely and equitable manner.
 - vi. Track and provide utilization information to the CNA as required by this policy or related guidance.
- (d) Federal Contracting Activities:
 - i. Require contractors furnishing products that are on the PL to entities of the Government to order those products from sources authorized by the Commission. (41 CFR 51-5.2(c); FAR 8.002(c)).
 - ii. As prescribed in FAR 8.005, incorporate FAR 52.208-9, Contractor Use of Mandatory Sources of Supply or Services, in all contracts and solicitations that require a contractor to provide supplies or services for Government use that are on the PL.

6. POLICY.

- (a) Products and services are added to and maintained on the AbilityOne PL to create and sustain employment opportunities for individuals who are blind or have significant disabilities.
- (b) Just as Federal customers are required to purchase items on the PL whenever those items meet the Government's needs, service-providing NPAs must purchase products from product-producing NPAs in the performance of a service contract in support of a Federal agency.
- (c) NPAs seeking a recommendation to perform and/or performing as service contractors are responsible for understanding and meeting the applicable



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supply chain requirements, including the requirement to purchase and use PL products.

- (d) PL Additions: Upon the effective date of this policy, all proposals for the addition of service requirements to the PL shall be accompanied by a written attestation from the recommended NPA's CEO or chief administrator that the NPA will request that FAR clause 52.208-9 (or an equivalent provision) and the appropriate contract schedule be included in all service contracts in support of a Federal agency.
- i. The attestation shall include the list of products, along with a reasonable estimate of the usage and consumption rates of the products, to be used in the performance of the service developed with the assistance of the CNA(s).
 - ii. If the attestation and listing of products are not included, the proposed addition will not be processed by Commission staff until the attestation is submitted.
 - iii. If the recommended NPA does not provide the attestation and an acceptable listing of products, the non-complying NPA will not be considered as capable, IAW CFR 51-2.4(3).
- (e) Ongoing Requirements: Upon the effective date of this policy, each service-providing NPA must request that FAR clause 52.208-9 and the appropriate contract schedule be included and updated in the service contract whenever it is renewed (to include bridge contracts). This requirement is applicable even if the original contract failed to include the FAR clause 52.208-9.
- i. At least six-months prior to a contract renewal, a service-providing NPA must provide a new attestation to its supporting CNA describing any updates, if any, to the contract schedule for any follow-on service contract requirements.
 - ii. At contract renewal, the CNA may not permit the distribution of an order IAW CFR 51-3.4 to an NPA that has failed to request that FAR clause 52.208-9 and the appropriate contract schedule be included in the follow-on service contract.
 - iii. If a Federal contracting officer fails to include the relevant FAR clause and schedule in a follow-on service, but the service-providing NPA has made every effort to ensure its inclusion, contract renewal may be permitted if:
 - i. The service-providing NPA provides an attestation document



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ensuring compliance with this policy, and

- ii. The CNA supporting the product-producing NPA concurs with the sufficiency of the attestation.
 - iv. The “ongoing requirement” does not apply to option years, but NPAs are strongly encouraged to begin procuring supplies from a product-producing NPA as soon as practicable.
- (f) Reporting: Service-providing NPAs shall provide sufficient data to their CNAs, in the format and frequency prescribed by the CNA, demonstrating they are purchasing supplies from product-producing NPAs in accordance with this policy.
- i. The CNAs shall develop a quarterly data-reporting system with input from the NPAs that captures, at a minimum, SKU-level data showing quantity and price.
 - ii. Service-proving NPAs acting as service contractors shall elevate to the appropriate CNA’s attention any instance in which the PL products cannot be purchased in the time required to meet the NPA’s needs.
 - iii. The CNAs, upon verifying that a certain PL product(s) cannot be purchased in the time required to meet the NPA’s needs, shall grant a purchase exception, and submit a copy of this documentation to the Commission.
- (g) Pricing: The Commission establishes the fair market price for products and services on the PL pursuant to the Commission’s regulations, policies, and procedures.
- i. Product-producing NPAs are encouraged to provide volume discounts and any other considerations to service-providing NPAs.
 - ii. A product-producing NPA may not charge a price to a service-producing NPA that exceeds the fair market price established by the Commission. If a service-producing NPA purchases a product that is not on the PL, the NPAs may agree to any price deemed equitable by the negotiating parties.
 - iii. If a service-providing NPA believes that a price for a specific supply is too high, it should try to negotiate a lower price with the product-producing NPA. If an agreement cannot be reached, it may request relief through the CNAs IAW established procedures.

7. PROCEDURES.



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- (a) SourceAmerica and the National Industries for the Blind (NIB) are directed to establish joint implementing procedures for carrying out this policy for all new and existing PL additions **no later than September 30, 2022**. The joint procedures must include, at a minimum, the following:
 - i. The roles and responsibilities of the CNAs, NPAs, and Federal agencies in implementing this policy.
 - ii. A detailed description of how this policy will apply for each new PL addition.
 - iii. A detailed description of how this policy will apply for existing PL items at contract renewal and an extension.
 - iv. A description of how AbilityOne distributors may be used to satisfy this policy.
 - v. A process for adjudicating disputes between service-providing NPAs and product-producing NPAs (including pricing).
- (b) The joint procedure created because of this policy must be approved by the Commission. The authority to approve the joint procedure is delegated to the Executive Director or an approved designee.

8. EXCEPTION TO POLICY.

This policy is applicable to CNAs and all NPAs performing a service or providing a product on the PL. However, the Commission may approve a joint request from both CNAs to limit the implementation of this policy to a certain class of contracts, a specific dollar threshold, and/or other appropriate business conditions. Exceptions to this policy may only be granted by the Commission Chairperson, Vice Chairperson, or Executive Director, and may not be further re-delegated.

9. SUPERSESSION.

None

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Jeffrey A. Koses
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APPROVED: _____ **Date:** July 20, 2022

Jeffrey A. Koses
Chairperson

